

(4)

No. 88-125

Supreme Court, U.S.

FILED

AUG 22 1988

JOSEPH E. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1988

LEWIS SIMON
and
S-J FINANCIAL CORPORATION,
Petitioners,

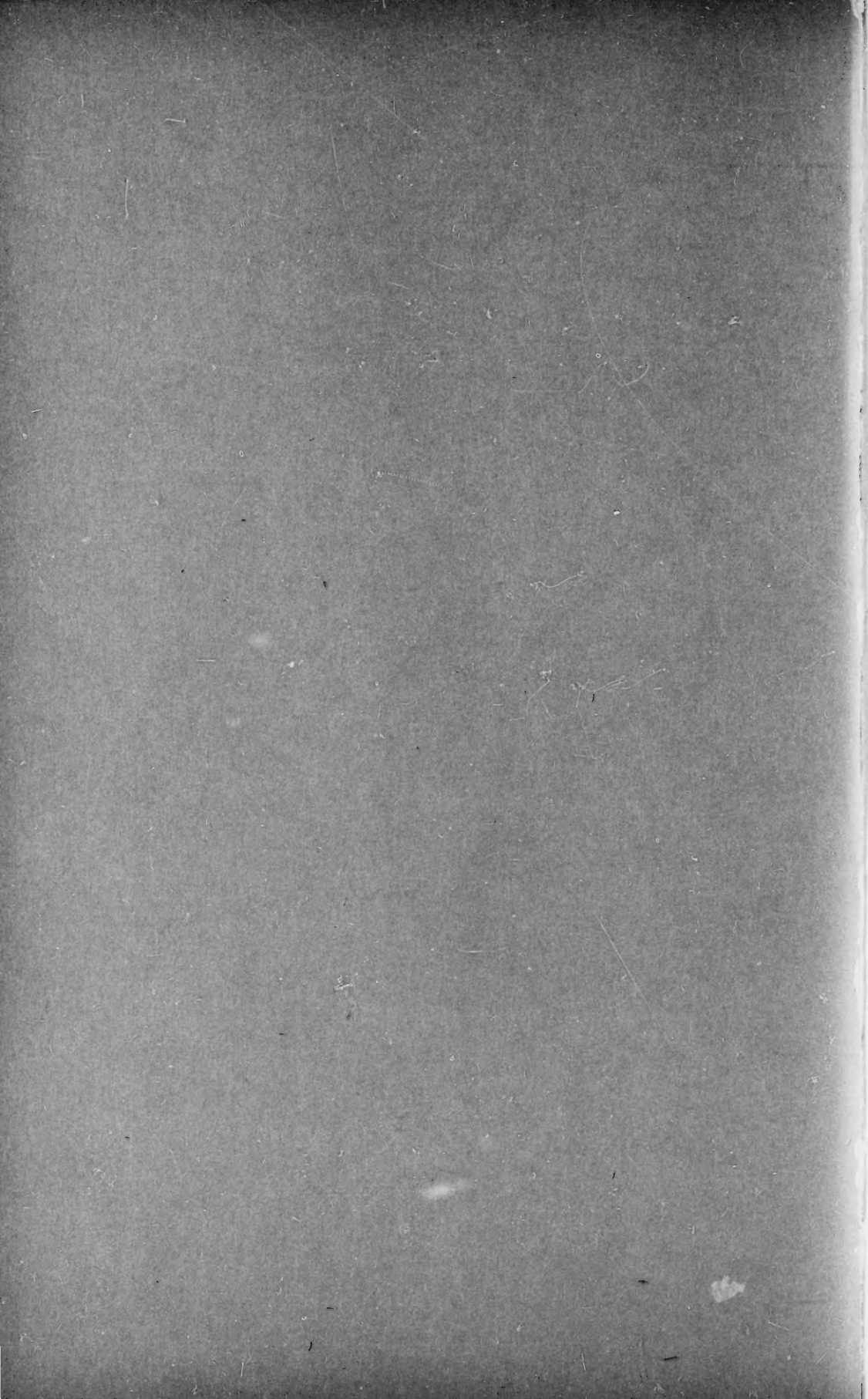
vs.

F/S AIRLEASE II, INC., GREYCAS, INC. and
THE SWIG INVESTMENT COMPANY
AIRCRAFT TRUST NO. 1,
Respondents.

BRIEF FOR GREYCAS, INC. IN OPPOSITION

ROBERT EHRENBARD
*Counsel of Record for Respondent
Greycas, Inc.*
KELLEY DRYE & WARREN
101 Park Avenue
New York, New York 10178
(212) 808-7800

Of Counsel:
ALAN M. EPSTEIN



QUESTIONS PRESENTED

Should this Court in the exercise of its discretion grant review on a writ of certiorari where

- (i) there are no special or important reasons therefor;
- (ii) there is no conflict between the decisions of the courts of appeal on the availability of Section 503(b)(1)(A) of the Bankruptcy Code as a basis for compensation to an unapproved outside professional;
- (iii) the court below interpreted the Bankruptcy Code so that specific

provisions governing a
professional's retention
and remuneration
controlled its
determination of
Petitioners' fee
application; and

- (iv) Petitioners' request for a
re-examination of factual
issues is of significance
only to the parties?

LIST OF PARTIES

Respondents herein, F/S Airlease II, Inc., The Swig Investment Company Aircraft Trust No. 1 and Greycas, Inc.,* were the appellants and cross-appellees in the proceedings before the United States Court of Appeals for the Third Circuit. Lewis Simon and S-J Financial Corporation were the appellees and cross-appellants in the court below.

* The list of Greycas, Inc.'s parents, subsidiaries and affiliates as required by Rule 28.1 is set forth in Appendix A hereto.



TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	iii
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	2
JURISDICTION.....	2
STATUTES AND APPLICABLE RULES.....	2
STATEMENT OF THE CASE.....	6
SUMMARY OF ARGUMENT.....	15
REASONS FOR DENYING THE WRIT	
1. THE OPINION BELOW DOES NOT CONFLICT WITH THE DECISION OF ANY OTHER COURT OF APPEALS.....	17
2. SECTION 503(b)(1)(A) IS IRRELEVANT TO THE ISSUES OF PROFESSIONAL RETENTION AND COMPENSATION.....	22
3. THE PETITION ONLY RAISES FACTUAL	

QUESTIONS OF IMPORTANCE TO THE PARTIES.....	31
--	----

CONCLUSION.....	37
-----------------	----

APPENDIX.....	A-1
---------------	-----

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<u>In Re Castle Tool Specialty Co., 22 B.R. 44 (Bankr. E.D. Pa. 1982).....</u>	30
<u>In re Chicago Lutheran Hospital Association, 75 B.R. 854 (Bankr. N.D. Ill. 1987).....</u>	31
<u>Denton & Anderson Co. v. Induction Heating Corp., 178 F.2d 841 (2nd Cir. 1949).....</u>	30
<u>Dickinson Industrial Site, Inc. v. Cowan, 309 U.S. 382 (1940).....</u>	24
<u>In re Ewing, 54 B.R. 952 (D.C. Colo. 1985).....</u>	21
<u>In re Farmer, 81 B.R. 857 (Bankr. E.D. Pa. 1988).....</u>	29
<u>General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175 (1937).....</u>	17
<u>Goodman v. Philip R. Curtis Enterprises, Inc., 809 F.2d 228 (4th Cir. 1987).....</u>	19

<u>In re Keegan Utility</u> <u>Contractors, Inc.</u> , 70 B.R. 87 (Bankr. W.D.N.Y. 1987).....	25
<u>Lavender v. Wood Law Firm</u> , 785 F.2d 247 (8th Cir. 1986).....	33
<u>Layne & Bowler Corp. v. Western</u> <u>Well Works, Inc.</u> , 261 U.S. 387 (1923).....	17
<u>Matter of Arkansas Co.</u> , 798 F.2d 645 (3rd Cir. 1986)....	14, 24, 33
<u>In the Matter of Schatz</u> <u>Federal Bearings Co.</u> , 17. B.R. 780 (Bankr. S.D.N.Y. 1982).....	27
<u>Matter of Triangle Chemicals,</u> <u>Inc.</u> , 697 F.2d 1280 (5th Cir. 83).....	33
<u>Radzanower v. Touche Ross</u> <u>& Co.</u> , 426 U.S. 148 (1976).....	28
<u>Rice v. Sioux City Memorial</u> <u>Park Cemetary, Inc.</u> , 349 U.S. 70 (1955).....	32
<u>Richards v. United States</u> , 369 U.S. 1 (1961).....	23
<u>Seidle v. GATX Leasing Corp.</u> , 778 F.2d 659 (11th Cir. 1985)....	29
<u>Ullman v. United States</u> , 350 U.S. 422 (1955).....	28
<u>United States v. Johnston</u> , 268 U.S. 220 (1925).....	32

United States v. Menasche,
348 U.S. 528 (1955).....22

United Steel Workers of
America, AFL-CIO-CLC v. Weber,
443 U.S. 193 (1978).....28

Wisconsin Electric Co. v.
Dunmore Co., 282 U.S 813
(1931).....21

STATUTES AND RULES CITED

	<u>Page</u>
Bankruptcy Code Section 101(13)(A)....	26
Bankruptcy Code Section 327.....	29, 30
Bankruptcy Code Section 327(a)....	2, 18, 23, 26
Bankruptcy Code Section 327(b).....	15
Bankruptcy Code Section 330....	18, 19, 23, 29, 30
Bankruptcy Code Section 330(a).....	3
Bankruptcy Code Section 503 (b)(1)(A).....	<u>passim</u>
Bankruptcy Code Section 503 (b)(2).....	<u>passim</u>
Bankruptcy Code Section 503(b)(4)....	19
Bankruptcy Rule 2014.....	23, 30, 33
Bankruptcy Rule 2014(a).....	5
28 U.S.C § 1254.....	2, 15, 17

No. 88-125

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

LEWIS SIMON

and

S-J FINANCIAL CORPORATION,

Petitioners,

- vs. -

F/S AIRLEASE II, INC.,
GREYCAS, INC. and
THE SWIG INVESTMENT COMPANY
AIRCRAFT TRUST NO. 1,

Respondents.

BRIEF FOR GREYCAS, INC. IN OPPOSITION

Respondent Greycas, Inc. respectfully requests the Court to deny the petition for a writ of certiorari seeking review of the Third Circuit Court of Appeals' decision in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 844 F.2d 99 (3rd Cir. 1988) (Pet. App. A); the opinion of the district court is reported at 84 B.R. 389 (W.D. Pa. 1986) (Pet. App. B); and the opinion of the bankruptcy court is reported at 59 B.R. 769 (Bankr. W.D. Pa. 1986) (Pet. App. C).

JURISDICTION

The opinion of the court of appeals was filed on March 21, 1988. A petition for rehearing was denied on April 19, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND APPLICABLE RULES

11 U.S.C. § 327(a): Except as otherwise provided in this section, the trustee, with the court's

approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 330(a): After notice to any parties in interest and to the United States trustee and a hearing, and subject to Sections 326, 328 and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, or to the debtor's attorney ... reasonable compensation for actual, necessary services

rendered by such trustee, examiner, professional person or attorney, as the case may be, ...based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title...

11 U.S.C § 503(b)(1)(A) and (b)(2):
After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under Section 502(f) of this title, including-

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries or commissions for services rendered after the commencement of the case:

(2) compensation and
reimbursement awarded under
Section 330(a) of this title...

Bankruptcy Rule 2014(a): An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327 or § 1103 of the Code shall be made only on application of the trustee or committee, stating the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor,

creditors, or any other party in interest, their respective attorneys and accountants. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors or any other party in interest, their respective attorneys and accountants.

STATEMENT OF THE CASE

Petitioners Lewis Simon and S-J Financial Corporation filed a Petition for Payment of Administrative Expenses on June 3, 1985 in the Bankruptcy Court of the Western District of Pennsylvania seeking compensation in the amount of \$450,000 for their efforts in re-leasing a Boeing 737-200 aircraft.

F/S Airlease II, Inc. had purchased the aircraft in 1980, with financing provided by Greycas, Inc. In connection with the closing of that transaction, F/S Airlease II had concluded a 10-year lease on the aircraft with Air Florida, with monthly rental proceeds of \$106,000. In a series of related transactions, F/S Airlease II sold the aircraft to Comet Leasing Corporation, which then sold it to The Swig Investment Company, which leased the aircraft back to F/S Airlease II. These subsequent sale and lease transactions were, by their express terms, completed subject to Greycas, Inc.'s first priority security interest in the aircraft.

Ultimately, Air Florida defaulted on its lease payments to F/S Airlease II and filed a Chapter 11 bankruptcy petition on July 3, 1984. On August 3, 1984, F/S Airlease II likewise filed for bankruptcy as, without rental proceeds from the underlying lease, F/S Airlease II was unable to meet its own financing payments to Greycas and rental obligations to Swig.

As early as July 25, 1984, Lewis Simon asserted he had the exclusive right to remarket the aircraft, based on a prior, undisclosed agreement with F/S Airlease II (the "May 1983 Settlement Agreement"). That agreement, obtained by Greycas for the first time in February, 1985 pursuant to a discovery request and

months after the alleged services for which compensation was claimed by Simon, resolved a litigated dispute between S-J Financial Corporation and FSC Corporation, F/S Airlease II's parent. Concluded with bankruptcy court approval, since FSC Corporation was a debtor-in-possession, the May 1983 Settlement Agreement, inter alia, granted Simon the right to re-market the aircraft and receive compensation provided he secured Greycas' consent. It also provided that the right to re-market ended 30 days prior to the termination of the extant lease on the aircraft (the Air Florida lease). Because Simon knew that the May 1983 Settlement Agreement expired by its own terms prior to the filing of F/S Airlease

II's bankruptcy, Simon proposed, drafted and executed two letter agreements in July, 1984 which proposed compensation different from those in the expired May 1983 Settlement Agreement. (These July agreements were also never voluntarily disclosed by Simon). The failure of Simon to disclose these agreement and the need for Greycas' consent to the terms of the May 1983 Settlement Agreement is particularly significant since Greycas is routinely leasing and selling aircraft and could have performed the very same service with little or no charge to the estate. Notwithstanding, Simon continued to declare his exclusive right to secure a new lessee for the aircraft, over Greycas' objections,

even though no application was made to the bankruptcy court to approve Lewis Simon's and S-J Financial's retention.

After Simon's unsuccessful attempt to re-lease the aircraft to America West Airlines in October, 1984, a lease proposal was concluded between F/S Airlease II and Aloha Airlines. Pursuant to established bankruptcy procedure, a hearing was conducted by the bankruptcy court and the Aloha Airlines lease was approved on November 30, 1984. At no time did Simon request or obtain authorization of his retention or fee arrangements from the Court. In fact, in a letter addressed to counsel for F/S Airlease II, Simon's attorney proposed that the November hearing be confined to the

confirmation issue, leaving the questions of allocation and distribution of the lease proceeds until a later date.

Seven months later, in June of 1985, Simon and S-J Financial Corporation filed an application for approval of their services and the payment of fees in the sum of \$450,000, predicated the application on the provisions of the expired, unenforceable May 1983 Settlement Agreement with F/S Airlease II. On April 14, 1986, the Bankruptcy Court for the Western District of Pennsylvania retroactively authorized Petitioners' services and awarded the requested \$450,000, which amounted to one-half of one month's rent for each year of the Aloha Airlines lease.

F/S Airlease II, Greycas, and The Swig Investment Company appealed to the District Court for the Western District of Pennsylvania, which affirmed the nunc pro tunc approval of Simon's appointment, vacated the compensation award for lack of proper substantiation, and remanded to the bankruptcy court for a determination of the amount of fees.

Appeals and cross-appeals to the Third Circuit Court of Appeals followed. On March 21, 1988, the Third Circuit issued its opinion reversing the district court's affirmance of the nunc pro tunc approval of Simon's employment. The court of appeals held that the bankruptcy court, as affirmed by the district court, abused its

discretion in retroactively authorizing Simon's employment. As the Third Circuit ruled in Matter of Arkansas Co., 798 F.2d 645 (3rd Cir. 1986), and other courts have held, only the existence of extraordinary circumstances justify nunc pro tunc approval of professional employment, and the facts attending Petitioners' application fell short of such circumstances. Because the court concluded that no facts or events satisfactorily explained or excused Simon's failure to obtain advance authorization for his services, the court did not reach the question of Simon's disinterestedness, to ascertain whether Simon could have been initially appointed under 327(a) of the Bankruptcy Code. The court also found Petitioners'

arguments of entitlement to compensation under Sections 327(b) or 503(b)(1)(A) of the Bankruptcy Code unavailing.

SUMMARY OF ARGUMENT

While Petitioners struggle to present reasons warranting the exercise of this Court's jurisdiction under 28 U.S.C. § 1254, a review of the record demonstrates that the only question raised by the instant Petition is whether a sophisticated professional, who was aware of the prior appointment and disclosure requirements of the Bankruptcy Code, but deliberately delayed seeking judicial approval of his retention until months after the completion of his services, is nevertheless entitled to receive compensation by circumventing the

explicit procedures for professional retention and remuneration contained in the Code? As will be shown herein:

- (1) there is no conflict between the decision of the court below and other courts of appeal;
- (2) the decision below interpreted the Bankruptcy Code so that the specific provisions governing outside professional retention and compensation controlled the determination of the fee application, and;
- (3) no question on a principle of law is presented that is sufficiently important to the public to warrant review by this Court.

REASONS FOR DENYING THE WRIT

I

THE OPINION BELOW DOES NOT
CONFLICT WITH THE DECISION
OF ANY OTHER COURT OF APPEALS

It is well established that a "real and embarrassing conflict of opinion and authority between the circuit courts of appeal" on a matter of "importance to the public" will warrant the exercise of this Court's jurisdiction under 28 U.S.C. § 1254. Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 392 (1923). The illusory conflict suggested by Petitioners offers no basis for granting a writ of certiorari. General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175 (1938).

The Third Circuit concluded that Petitioners' failure to observe

bankruptcy procedures, particularly the requirement of obtaining advance judicial authorization of their employment, absent extraordinary circumstances explaining that failure, mandated a denial of fees under Sections 327(a), 330 and 503(b)(2) of the Bankruptcy Code. The court also reasoned that the broad language of Code Section 503(b)(1)(A), awarding administrative priority for the costs and expenses of preserving the estate, provided no statutory basis for awarding fees to applicants such as Petitioners. An exclusive concentration on the benefit conferred on the estate by Petitioners' efforts would vitiate the Code's explicit provisions governing outside professional

employment and compensation. To give expression and meaning to all terms of the Bankruptcy Code, the court determined that 503(b)(1)(A) is unavailable to unapproved professionals, such as Petitioners, to circuitously receive compensation denied them under Sections 330 and 503(b)(2).

Nor is the decision in Goodman v. Philip R. Curtis Enterprises, Inc., 809 F.2d 228 (4th Cir. 1987), relied upon by Petitioner, at odds with the Third Circuit's determination. In Goodman, the Fourth Circuit did not rule on the propriety of awarding compensation to an unapproved outside professional under 503(b)(1)(A). Instead, the court considered the allowance of a Section 503(b)(4)

administrative priority to an attorney employed by a debtor-in-possession and properly retained with the bankruptcy court's approval. Finding that § 503(b)(4), by definition, applies only to professionals retained by creditors or custodians, the court suggested the fee might qualify for a priority, if at all, under § 503(b)(1)(A), and vacated the fee award.

The professional in Goodman, unlike Petitioners, obtained proper advance authorization of his services, so any award of compensation under 503(b)(1)(A) on remand would not undermine or contravene the explicit professional person provisions of the Code. The cardinal differences between Goodman

and the instant case therefore arise from their distinct factual features, rather than from any disagreement over the application of principles of law or equity, so a writ of certiorari should not issue. Wisconsin Electric Co. v. Dunmore Co., 282 U.S. 813 (1931).

The district court's decision in Ewing (In re Ewing, 54 B.R. 952 (D.C. Colo. 1985)) likewise does not conflict with the Third Circuit's denial of compensation to Petitioners under 503(b)(1)(A). As the Ewing court observed, the question of the professional's entitlement to payment of an administrative expense under Section 503 was not raised or adjudicated before the bankruptcy court and was not properly before

the district court on appeal. 54
B.R. at 956.

Petitioners' inability to
establish a conflict between the
circuit courts, let alone a
disagreement implicating issues of
special or important dimension,
warrants a denial of the Petition.

II

SECTION 503(b)(1)(A) IS IRRELEVANT TO THE ISSUES OF PROFESSIONAL RETENTION AND COMPENSATION

Contrary to Petitioners' claims,
the Third Circuit's disposition of
Petitioners' request for
compensation under 503(b)(1)(A)
insures that each provision of the
Bankruptcy Code and Rules is given
effect, United States v. Menasche,
348 U.S. 528 (1955), and that no
provision is read in isolation from
the context of the whole Code.

Richards v. United States, 369 U.S. 1 (1961). As this Court cautioned in Richards, "[W]e must not be guided by a single sentence or member of a sentence, but [should] look to the provisions of the whole law, and to its object and policy." 369 U.S. at 11.

The Bankruptcy Code contains explicit, interrelated provisions governing the employment and remuneration of outside professionals who wish to perform post-petition services for the debtor-in-possession or trustee. Section 327(a) specifies the eligibility requirements, Bankruptcy Rule 2014 outlines the procedures and details of a professional's application for court approval, and Section 330 lists the factors to be

weighed by the court in determining the level of compensation for actual and necessary services rendered. By centralizing control over professional retention and fees in the courts, Congress sought to reduce the incidence of unnecessary services, minimize the drain of fee requests on the assets of the estate, and guard against the recurrence of the "many sordid chapters" in the history of fees in corporate reorganizations.

Dickinson Industrial Site, Inc. v. Cowan, 309 U.S. 382, 388 (1940);
Matter of Arkansas Co., 798 F.2d 645 (3rd Cir. 1986).

The administrative priority provisions likewise differentiate between the payment of compensation to professionals (503(b)(2)) and the

payment of costs and expenses of preserving the estate (503(b)(1)(A)). By according professional compensation administrative priority under § 503(b)(2), Congress provided an incentive for professionals to make their services available to the estate. In re Keegan Utility Contractors, Inc., 70 B.R. 87 (Bankr. W.D.N.Y. 1987). The administrative priority available under the broad language of § 503(b)(1)(A) is therefore unnecessary to encourage professionals to participate in debtor's rehabilitation.

Moreover, remunerating fee applicants under § 503(b)(1)(A) would effectively nullify the eligibility and hiring requirements

deliberately incorporated into the Code by Congress. Under § 503(b)(2), a fee is accorded administrative priority provided that the professional has satisfied the requirements of § 327(a) -- a showing of disinterest, as defined by Code § 101(13)(A), and a demonstration of no adverse interest to the estate. No such safeguards are present in Section 503(b)(1)(A). Designating professional fees as "administrative costs of preserving the estate" under § 503(b)(1)(A) would permit an allowance of compensation even in the face of an absolute disqualification, such as lack of

disinterested status.* To credit Petitioners' contention that compensation is payable to an unapproved professional under 503(b)(1)(A) would therefore emasculate numerous sections of the Bankruptcy Code and judicially create an administrative priority which Congress chose not to adopt. The courts should not commit to a

* In the courts below, respondents briefed and argued that Simon was not "disinterested", since he was listed as a creditor on debtor's schedules. The Third Circuit never reached the question of Petitioners' "disinterestedness", since its decision rested on the absence of extraordinary circumstances to warrant retroactive authorization of Petitioners' services. A finding of "interestedness" is not merely a technical obstacle, it mandates a denial of compensation. In the Matter of Schatz Federal Bearings Co., 17 B.R. 780 (Bankr. S.D.N.Y. 1982).

policy where there is no indication that Congress favors such a policy, Ullman v. United States, 350 U.S. 422, 442-43 (Douglas J., dissenting) (1955), and in fact, disfavors such a result.

The Third Circuit's resolution of the purported tension between the broad administrative priority provision (§ 503(b)(1)(A)) and the professional person provisions also comports with the rules of statutory construction applied in this Court. It is axiomatic that specific statutory references control over general references, Radzanower v. Touche Ross & Co., 426 U.S. 148 (1976), and that general terms of a statute should be limited to avoid an unsound or absurd result. United Steel Workers of America,

AFL-CIO-CLC v. Weber, 443 U.S. 193 (1978). In the bankruptcy context, where one section of the Code specifically governs an issue, another section should not be interpreted to cause an irreconcilable conflict. Seidle v. GATX Leasing Corp., 778 F.2d 659 (11th Cir. 1985); In re Farmer, 81 B.R. 857 (Bankr. E.D. Pa. 1988). If Congress had intended that § 503(b)(1)(A) would operate as the basis for awarding fees to professionals, it would not have codified specific provisions, such as Sections 327, 330 and 503(b)(2) controlling that issue. By refusing to extend the administrative priority of § 503(b)(1)(A) to professionals who have failed to comply with Code requirements, the

Third Circuit observed the norms of statutory construction, averted a conflict and preserved the protections that Sections 327, 330 and Rule 2014 provide to creditors.

Nor has the vitality or meaning of Section 503(b)(1)(A) been destroyed by the Third Circuit's decision. So while compensation to unapproved professionals is manifestly beyond the scope of § 503(b)(1)(A), administrative costs such as rent for premises occupied by the debtor-in-possession, In re Castle Tool Specialty Co., 22 B.R. 44 (Bankr. E.D. Pa. 1982), commissions on sale orders, see Denton & Anderson Co. v. Induction Heating Corp., 178 F.2d 841 (2nd Cir. 1949), and vacation pay accrued post-petition by debtor's employees,

In re Chicago Lutheran Hospital Association., 75 B.R. 854 (Bankr. N.D. Ill. 1987), are nevertheless recoverable under 503(b)(1)(A). Thus, Petitioners have demonstrated no nullification of a Congressional enactment, no abridgement of the rules of statutory construction promulgated by this Court and no basis for review through a writ of certiorari.

III

THE PETITION ONLY RAISES FACTUAL QUESTIONS OF IMPORTANCE TO THE PARTIES

The only remaining issues Petitioners seek to raise turn on the particular facts of this case; namely, whether the Third Circuit Court of Appeals' determination to deny nunc pro tunc employment approval was factually justified.

Since a grant of certiorari is not meant to serve such a fact-finding function, nor to address issues of importance only to the parties, Rice v. Sioux City Memorial Park Cemetary, Inc., 349 U.S. 70 (1955), this petition does not qualify for review. As this Court noted in United States v. Johnston, 268 U.S. 220, 227 (1925); "We do not grant a certiorari to review evidence and discuss specific facts."

The factual questions raised by Petitioners have already been thoroughly considered and resolved, and Petitioners should not be afforded an opportunity to reargue the same issues of fact they unsuccessfully argued before.

While the Bankruptcy Code and Rules contemplate that court

authorization will precede a professional's commencement of services,* by their terms they do not prohibit a court from granting nunc pro tunc approval when extraordinary facts and circumstances support such an exercise of discretion. Lavender v. Wood Law Firm, 785 F.2d 247 (8th Cir. 1986); Matter of Arkansas Co., 798 F.2d 645 (3rd Cir. 1986); Matter of Triangle Chemicals, Inc., 697 F.2d 1280 (5th Cir. 1983). The Court of Appeals for the Third Circuit painstakingly reviewed the circumstances surrounding

* Bankruptcy Rule 2014 provides that an application for employment must indicate "the name of the person to be employed" and "the professional services to be rendered". (emphasis added).

Petitioners' application for compensation and soundly concluded, on the facts, that Petitioners' failure to comply with the Bankruptcy Code's employment requirements was inexcusable and fatal to their request for fees. Accordingly, the Court of Appeals ruled that the district court abused its discretion by affirming retroactive approval of the services, and reversed the order.

Specifically, the Court of Appeals made the following findings of fact in deciding that there were no extraordinary circumstances to support Petitioners' nunc pro tunc appointment:

- "Simon is a sophisticated businessman who was represented by attorneys

throughout the course of his dealings with Airlease";

- "Simon's attorney was familiar with the requirements of the Bankruptcy Code, including the requirements of Section 327(a)";
- "In the November 28, 1984 letter written by his attorney to AirLease, Simon agreed to limit the request for court approval to the lease only";
- "Simon did not seek the requisite approval from the court when AirLease's bankruptcy began, nor did he seek approval at any time during the four-month period in which he was performing

his services. Not until June 3, 1985 -- almost a year from when he had commenced his services and a full seven months from the date he had concluded them -- did Simon petition the court for payment of administrative expenses";

- "The facts of this case ... do not indicate that Simon was faced with any time pressure at all with respect to seeking the court's approval of his prospective services"; and

- "The fact that the applicant's services were beneficial to the debtor's estate is immaterial to this court's decision regarding nunc pro tunc approval".

This Court does not sit for the benefit of particular litigants to re-examine factual issues. While Petitioners are understandably dissatisfied with the Third Circuit's determination, they must be denied an opportunity to seek a review of the facts and purported equities surrounding their purposefully belated application for court approval and compensation.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

Robert Ehrenbard
Counsel of Record for
Respondent Greycas, Inc.
KELLEY DRYE & WARREN
101 Park Avenue
New York, New York 10178
(212) 808-7800

Of Counsel:

Alan M. Epstein



APPENDIX



List of Greycas, Inc.'s
Parents, Subsidiaries
and Affiliates as
Required by Rule 28.1

Aeroplex Stores, Inc. (Texas)
Air Agency, Inc. (Florida)
Aircraft Service, Inc. (Florida)
AIRCRAFT SERVICE INTERNATIONAL, INC.
(Delaware)
ASII (Aircraft Service Canada) Ltd.
(Canada)
Bahamas Airport Services Limited
(Bahama)
Freeport Flight Services Limited
(Bahama)
DISPATCH SERVICES, INC. (Florida)
FABER ENTERPRISES, INC. (Delaware)
(70%)
Faber Drug Co., Inc. (Illinois)
Faber Tower Restaurants, Inc.
(Illinois)
Franklin Ventures, Inc. (Illinois)
O'Hare Drug Co., Inc. (Illinois)
Florida Aviation Fueling Company, Inc.
(Florida)
GLI Holding Company (Delaware) (22.5%)
Greyhound C&D, Inc. (Illinois)
CONSULTANTS & DESIGNERS INC.
(Delaware)
Award Advertising Agency, Inc.
(New York)
C&D Technology Inc. (Florida)
Canadian Consultants & Designers,
Limited (Canada)
Canadian Design Service Co.
Limited (Canada)
Design Service Company, Inc.
(New York)
Telecomm Technical Support Inc.
(Arizona)
Yollis Inc. (California)

GREYHOUND EXHIBITGROUP INC.
 (Delaware)
 Exhibitgroup (Canada) Ltd.
 (Canada)
 David H. Gibson Company, Inc.
 (Texas)
Greyhound Temporary Personnel, Inc.
 (New York)
GREYHOUND-DOBBS INCORPORATED (Delaware)
 Carson International Inc. (Delaware)
 Dobbs Houses, Inc. (Delaware)
 Dobbs Houses of Kansas, Inc.
 (Kansas)
 Dobbs Houses of Texas, Inc.
 (Texas) (49%)
 Dobbs-Paschal Midfield Corporation
 (Georgia) (80%)
Dobbs International Services, Inc.
 (Delaware)
 Dobbs Houses International, Inc.
 (Delaware)
 NAS-Dobbs Houses Limited
 (United Kingdom)
Dobbs International (U.K.) Limited
 (United Kingdom)
 Dobbs Houses Limited (United
 Kingdom)
Dobbs of Mississippi, Inc.
 (Mississippi)
GREYHOUND EXPOSITION SERVICES, INC.
 (Nevada)
GREYHOUND FOOD MANAGEMENT, INC.
 (Michigan)
 Cassano's Inc. (Ohio)
 AMC Pizza, Inc. (Ohio)
 Cassano Investments, Inc. (Ohio)
 Cassano Pizza King of Indiana,
 Inc. (Indiana)
 HMC Pizza, Inc. (Ohio)
 VJC Pizza, Inc. (Ohio)

Faber Enterprises of Texas Inc.
(Texas)(49%)
Glacier Park, Inc. (Arizona)(80%)
Waterton Transport Company,
Limited (Alberta)
Greyhound Food Management of
Texas, Inc. (Texas) (49%)
Restaura, Inc. (Pennsylvania)
Restaura, S.A. (Belgium)
Restauration Roger Lorent
S.A. (Belgium)
Greyhound International Travel, Inc.
(Florida)
Greyhound World Travel (B.V.)
(Netherlands)
Greyhound World Travel A G
(Switzerland)
Greyhound World Travel GmbH
(Austria)
Greyhound World Travel GmbH
(Germany)
Greyhound World Travel S.A.R.L.
(France)
GREYHOUND LEISURE SERVICES, INC.
(Florida)
Greyhound-ANA Venture Company
(Florida)(51%)
Greyhound Leisure Services, Inc.
(Cayman Islands)
PREMIER CRUISE LINES, LTD. (Cayman
Islands)(80%)
GREYHOUND SUPPORT SERVICES, INC.
(Delaware)
Berli Jucker Greyhound Services
Limited (Thailand)(49%)
Greyhound Maintenance, Inc. (Arizona)
Greyhound Oakland Maintenance,
Inc. (California)(49%)
Greyhound Services Saudi Arabia Ltd.
(Saudi Arabia)(40%)

Las Vegas Convention Service Co.
(Nevada)
MOTOR COACH INDUSTRIES, INC.
(Delaware)
TRANSPORTATION LEASING CO. (California)
Greyhound Bus Depot of Atlanta, Inc.
(Georgia)(87%)
Greyhound Canada Holdings, Inc.
(Alberta)
Greyhound Canada Inc. (Canada)
GREYHOUND LINES OF CANADA LTD.
(Canada)(68%)
Brewster Transport Company
Limited (Alberta)
Frank Fair Industries Ltd.
(Manitoba)
MOTOR COACH INDUSTRIES
LIMITED (Manitoba)
Southeastern Stages, Inc.
(Georgia)(40%)
WGL Properties, Inc. (Delaware)
TRANSPORTATION MANUFACTURING
CORPORATION (Delaware)
Custom Coach Corporation
(California)
Custom Coach Corporation
(Tennessee)
Dallas Smith Engineering Corp.
(Arizona)(49.88%)
Greyhound Overseas Services, Inc.
(Virgin Islands)
TRAVELERS EXPRESS COMPANY, INC.
(Minnesota)
Custom Computer Applications, Inc.
(Tennessee)
TRAV/ACT Systems, Inc. (Michigan)
Travelers Express Co. (P.R.) Inc.
(Puerto Rico)
UNIVERSAL COACH PARTS, INC. (Delaware)

CONSUMER PRODUCTS GROUP

ARMOUR AND COMPANY (Arizona)
THE DIAL CORPORATION (Delaware)
Ardison Properties, Inc.
(Delaware)
ARMOUR HANDCRAFTS, INC. (Arizona)
Malina International Sales
Corporation (Delaware)
ARMOUR INTERNATIONAL COMPANY
(Arizona)
AIC Foreign Sales Corporation
(Virgin Islands)
Armour-Dial del Ecuador, S.A.
(Ecuador)
Armour Foods (Beneluz) N.V.
(Belgium)
Armour Foods (Canada) Limited
(Ontario)
Armour Foods (Deutschland)
GmbH (Germany)
Morris Packing G.m.b.H
(Germany)
Armour Foods (U.K.) Ltd.
(United Kingdom)
Armour & Company Limited
(United Kingdom)
Armour Panama, S.A. (Panama)
Clearly Natural Products, Inc.
(Arizona)
The Dial Redevelopment
Corporation (Missouri)
The Ft. Madison Dial, Inc. (Iowa)
Purex de Panama, S.A. (Panama)
Greynom Inc. (Arizona)
CAG Inc. (Nevada)

FINANCIAL GROUP

150708 Canada Inc. (Canada)

Essex Place Inc. (Arizona)
GCMC Inc. (Arizona)
 Grey Gateway Realty Corporation
 (Arizona)
 GRT Inc. (Arizona)
Greyhound BID Holding Corp. (Arizona)
 Financiera Greyhound, S.A. (Panama)
 Nacional Arrendadora, S.A. de C.V.
 (Mexico)
GREYHOUND FINANCIAL & LEASING
 CORPORATION AG (Switzerland)
 Greyfin (Nassau) Limited (Bahamas)
 Greyfin Corporation (Liberia)
 Greyhound Maritime Services Inc.
 (Liberia)
 Greyhound Shipping Corporation
 (Liberia)
 Greyhound Financial & Leasing
 Limited (Bermuda)
 S.R.A. Europe S.A. (Belgium)
GREYHOUND FINANCIAL CORPORATION
 (Delaware)
 Bravo Aircraft Leasing, Inc.
 (Delaware)
 First Greyhound Leasing Company
 (Delaware)
 Greycas, Inc. (Arizona)
 New Jersey Realty Corporation II
 (California)
 New York Realty Corporation II
 (California)
 Greyhound Equipment Leasing
 Corporation (Delaware)
 Greyhound Inter-American Aircraft
 Leasing, Ltd. (Arizona)
 Greyhound Real Estate Finance
 Company (Arizona)
 Commonwealth Avenue Warehouse,
 Inc. (Florida)
 Greyhound Investors Corporation
 (Arizona)

Greyhound Real Estate Investment
BRB Inc. (Arizona)
Greyhound Real Estate Investment
Eight Inc. (Delaware)
Greyhound Real Estate Investment
Eleven Inc. (Delaware)
Greyhound Real Estate Investment
Five Inc. (Delaware)
Greyhound Real Estate Investment
Nine Inc. (Delaware)
Greyhound Real Estate Investment
One Inc. (Arizona)
Greyhound Real Estate Investment
S Inc. (Arizona)
Greyhound Real Estate Investment
Seven Inc. (Delaware)
Greyhound Real Estate Investment
Six Inc. (Delaware)
Greyhound Real Estate Investment
Ten Inc. (Delaware)
Greyhound Real Estate Investment
Two Inc. (Arizona)
Greyhound Real Estate Investment
W Inc. (Arizona)
Interim Funding Corporation
(Arizona)
Greyrail Corporation (Arizona)
Greyship Corp. (Delaware)
Greytech Services Limited (Hong Kong)
GSB, Inc. (District of Columbia)
Medbarge, Inc. (Delaware)
Greyhound Holding, A.G. (Switzerland)
Greyhound Holdings Limited (United
Kingdom)
Aircraft Service Limited (United
Kingdom)
Cygnus Insurance Management Limited
(United Kingdom)
Greyhound Financial Services Limited
(United Kingdom)

Chigwell Properties Ltd. (United Kingdom)
Greyfin Services Limited (United Kingdom)
Greyhound Maritime Services (Hellas) Ltd. (Greece)
Greyhound Equipment Finance Limited (United Kingdom)
Greyhound Guaranty Limited (United Kingdom)
Greyhound Credit Limited (United Kingdom)
Greyhound Finance International Limited (United Kingdom)
Greyhound Guaranty Nominees Limited (United Kingdom)
Secured Advances Limited (United Kingdom)
Greyhound Properties Limited (United Kingdom)
Greyhound Property Investments Limited (United Kingdom)
Townmead Garages Limited (United Kingdom)
Greyhound World Travel Limited (United Kingdom)
Jetsave Ltd. (United Kingdom)
Jetsave Transatlantic Ltd. (United Kingdom)
Jetsave Travel Ltd. (United Kingdom)
PINE TOP INSURANCE COMPANY LIMITED (United Kingdom)
Greyhound Realty Corporation (Arizona)
Greyhound Realty of Texas Inc. (Texas)
Tri-State Investment Company (Delaware)(27%)
MCI Acceptance Corp. (Delaware)
Morga Investment Co. (Arizona)

GREYHOUND PORTFOLIO HOLDINGS
CORPORATION (Arizona)
Management Data Systems, Inc.
(Wisconsin)
Mortgage Assurance Services
Corporation (Wisconsin)
VEREX ASSURANCE, INC. (Wisconsin)
Commercial Mortgage Insurance,
Inc. (Wisconsin)
Verex Capital Corporation
(Wisconsin)
Verex Credit Insurance, Inc.
(Wisconsin)
Verex General Agency, Inc.
(Wisconsin)
Verex MBS Funding Corporation
(Wisconsin)
Verex Mortgage Corporation
(Wisconsin)
Verex Properties, Inc. (Wisconsin)
Verex Reinsurance, Inc. (Arizona)
Verex Relocation Services, Inc.
(Wisconsin)
Verex Securities, Inc. (Wisconsin)
Verex Services, Inc. (Wisconsin)
Pine Top Insurance Company
(Illinois) (In Liquidation)
Pine Top Syndicate, Inc. (New York)
(In Liquidation)
Pine Top Life Company (Arizona)
TGC Insurance Company Ltd (Bermuda)